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Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA**

Edward Harold Schad, Jr.,  
Plaintiff,

v.

Janice K. Brewer, Governor of Arizona,  
Charles L. Ryan, Director, Arizona  
Department of Corrections, Ron  
Credio, Warden, Arizona Department  
of Corrections-Eyman, Lance Hetmer,  
Warden, Arizona Department of  
Corrections-Florence  
Defendants.

Case No. \_\_\_\_\_

COMPLAINT FOR EQUITABLE,  
INJUNCTIVE, AND  
DECLARATORY RELIEF [42 U.S.C  
§ 1983]

**Execution Scheduled October 9,  
2013**

**Nature of Action**

1. This action is brought pursuant to 42 U.S.C. § 1983 for violations and threatened violations by the Arizona Department of Corrections (“ADC”) of Plaintiff’s First Amendment right of access to governmental proceedings in the execution context, and his right to due process under the Fourteenth Amendment to the United States Constitution.

1           2.     This Complaint does not challenge Plaintiff's underlying capital  
2 conviction or sentence of death, nor does it allege that lethal injection as a form of  
3 execution is *per se* unconstitutional.

4           3.     Plaintiff has reason to believe that ADC intends to execute him with  
5 pentobarbital that is expired.

6           4.     Plaintiff alleges that Defendants' failure to provide him with proper  
7 notice regarding the pentobarbital ADC intends to use in his execution violates his  
8 First Amendment right of access to governmental proceedings in the execution  
9 context, and his due-process rights under the Fourteenth Amendment of the  
10 United States Constitution.

11          5.     Plaintiff alleges that Defendants' lack of transparency regarding their  
12 supply of pentobarbital—demonstrated by their refusal to provide information to  
13 him—violates his First Amendment right of access to governmental proceedings  
14 in the execution context, and by preventing him from determining that Defendants  
15 are capable of carrying out the death sentence in a lawful manner.

16          6.     Plaintiff alleges that Defendants unconstitutionally rely on Arizona  
17 Revised Statutes section 13-757(C), a statute that protects the identity of persons  
18 who participate in executions, to hide public governmental activity from him, in  
19 violation of his First Amendment right of access to governmental proceedings in  
20 the execution context.

21          7.     Plaintiff seeks equitable, injunctive, and declaratory relief to prevent  
22 Defendants from carrying out his execution by using pentobarbital from a  
23 concealed manufacturer.

24          8.     Plaintiff seeks equitable, injunctive, and declaratory relief to prevent  
25 Defendants from carrying out his execution by using pentobarbital from a  
26 concealed distributor.





1 violations. Despite the inapplicability of the PLRA, Plaintiff has exhausted all the  
2 remedies available to him in an effort to resolve this issue.

3       24. Plaintiff, through his counsel asked Dale A. Baich of the Office of  
4 the Federal Public Defender for the District of Arizona to request certain  
5 information from ADC about the drugs ADC intended to use in Plaintiff's  
6 execution. Specifically, he asked for information about the drugs' manufacturer  
7 and source; the drugs' lot numbers and expiration dates; whether the drugs are  
8 from a domestic or foreign source; and whether the drugs have federal Food and  
9 Drug Administration (FDA) approval. (Letter from Dale A. Baich to Charles  
10 Ryan, July 19, 2013, attached as Ex. A.)

11       25. In that same letter, Director Ryan was asked to provide  
12 documentation indicating that the persons tasked with executing him had authority  
13 to handle substances that are classified as controlled substances under the federal  
14 Controlled Substances Act. (Ex. A.)

15       26. On July 30, 2013, Director Ryan responded by asserting that ADC  
16 "intends to use unexpired, domestically obtained Pentobarbital" for the execution.  
17 (Letter from Charles Ryan to Dale A. Baich, July 30, 2013, attached as Ex. B.)

18       27. On August 6, 2013, Director Ryan was sent a follow-up letter, asking  
19 for the answers to Plaintiff's previous questions, and asking if ADC intended to  
20 use Nembutal<sup>®</sup>, which is the brand name for FDA-approved pentobarbital. (Letter  
21 from Dale A. Baich to Charles Ryan, Aug. 6, 2013, attached as Ex. C.)

22       28. On August 16, 2013, Director Ryan responded, asserting that  
23 information about the name of the manufacturer and the source of the drug "is  
24 confidential and is not subject to disclosure under A.R.S. § 13-757(C)." (Letter  
25 from Charles Ryan to Dale A. Baich, August 16, 2013, attached as Ex. D.)

26       29. To date, the State has refused to provide Plaintiff with the  
27 information he requested regarding the pentobarbital it intends to use in his  
28 execution.



### **Federal Drug Laws**

39. Drugs are regulated by, *inter alia*, the federal Food, Drug, and Cosmetics Act (FDCA).

40. The FDCA is enforced by the federal Food and Drug Administration (FDA).

41. The FDA requires registered drug establishments to provide the agency with current lists of all drugs the establishments produce for commercial distribution.

42. Each drug produced by registered drug establishments is identified by a unique number called the National Drug Code (“NDC”).

43. If a drug is classified as a controlled substance under the federal Controlled Substances Act, the drug is also regulated by the federal Drug Enforcement Agency (“DEA”).

44. If a drug is a controlled substance, individuals who wish to handle it must have appropriate registration from the DEA.

45. Sodium thiopental is a controlled substance.

46. Pentobarbital is a controlled substance.

### **Sodium Thiopental**

47. Beginning in 2010, ADC developed a history of using illegitimately obtained controlled-substance drugs in executions.

48. Sodium thiopental is not approved by the FDA.

49. Sodium thiopental does not have an NDC.

50. Sodium thiopental is a Schedule III drug under the federal Controlled Substances Act (CSA).

51. In 2010, ADC’s protocol called for lethal injections to be carried out via a three-drug procedure, the first drug of which was sodium thiopental.

52. In September 2010, the State of Arizona scheduled an execution for Jeffrey Landrigan.





1           64. Nembutal<sup>®</sup> has an NDC.

2           65. Pentobarbital is a Schedule II drug under the Controlled Substances  
3 Act.

4           66. ADC provided Nembutal<sup>®</sup> procurement records to counsel with the  
5 Office of the Federal Public Defender for the District of Arizona (FPD) in August  
6 2011 in litigation unrelated to this matter.

7           67. According to ADC's August 2011 procurement records, ADC  
8 ordered 75g of Nembutal<sup>®</sup> on September 27, 2010.

9           68. According to ADC's August 2011 procurement records, the  
10 September 2010 purchase was the only supply of Nembutal<sup>®</sup> ADC possessed at  
11 the time it produced those records.

12           69. According to ADC's August 2011 procurement records, ADC's  
13 supply of Nembutal<sup>®</sup> it purchased in 2010 expired in March 2013.

14                           **Legal suppliers of Nembutal<sup>®</sup>**

15           70. During the time period 2010 (when ADC purchases its supply of  
16 Nembutal<sup>®</sup>) through approximately January 2012, Lundbeck's Nembutal<sup>®</sup> was the  
17 only FDA-approved source of pentobarbital.

18           71. In July 2011, Lundbeck instituted distribution controls on  
19 Nembutal<sup>®</sup>.

20           72. Lundbeck's distribution controls established a limited set of  
21 distributors authorized to sell Nembutal<sup>®</sup>.

22           73. Lundbeck instituted its distribution controls to prevent the legitimate  
23 sale of Nembutal<sup>®</sup> to departments of corrections in states that use lethal injection  
24 for capital punishment.

25           74. In December 2011, Lundbeck announced the sale of its interest in  
26 Nembutal<sup>®</sup> to Akorn.

27           75. When Akorn purchased Lundbeck's interest in Nembutal<sup>®</sup>, Akorn  
28 kept Lundbeck's distribution controls in place.

1           76. Currently, Akorn is the only FDA-approved source of pentobarbital.

2           77. As of July 2011, ADC had no legitimate source from which to  
3 purchase Nembutal<sup>®</sup>.

4           **ADC has obtained a new supply of Nembutal<sup>®</sup>, but refuses to provide**  
5 **expiration dates and other information about the supply.**

6           78. Last month, ADC produced documents indicating that ADC now has  
7 a supply of Nembutal<sup>®</sup>.

8           79. On September 17, 2013, the American Civil Liberties Union of  
9 Arizona (ACLU) filed a public-records request with ADC, asking for information  
10 pertaining to drugs ADC intends to use in Plaintiff's execution, including, *inter*  
11 *alia*, the manufacturer, distributor, lot number, expiration date, and NDC of the  
12 drugs.

13           80. On September 25, 2013, ADC gave certain information to ACLU  
14 relating to the pentobarbital ADC intends to use in Plaintiff's execution. (Letter  
15 from Dawn Northup to Kelly Flood, Sept. 25, 2013, attached as Ex. E.)

16           81. ADC's documents demonstrate that ADC ordered 25g of Nembutal<sup>®</sup>.  
17 (Invoice attached to Letter from Dawn Northup to Kelly Flood, Sept. 25, 2013,  
18 attached as Ex. E(1).)

19           82. ADC redacted the month and day on which ADC ordered the  
20 Nembutal<sup>®</sup>, but left the year (2011) unredacted. (Ex. E(1).)

21           83. ADC redacted the month and day on which the shipment was due,  
22 but left the year (2011) unredacted. (Ex. E(1).)

23           84. ADC redacted the drug's NDC. (Ex. E(1); *see also* Inventory Labels,  
24 attached to Letter from Dawn Northup to Kelly Flood, Sept. 25, 2013, attached as  
25 Ex. E(2).)

26           85. ADC either redacted or withheld the expiration dates of the  
27 Nembutal<sup>®</sup>. (Ex. E(2).)

1           86.   ADC either redacted or withheld the lot numbers of the Nembutal<sup>®</sup>.  
2 (Ex. E(2).)

3           87.   ADC redacted the manufacturer name of the Nembutal<sup>®</sup>. (Ex. E(1)  
4 and E(2).)

5           88.   ADC redacted the distributor of the Nembutal<sup>®</sup>. (Ex. E(1) and E(2).)

6           89.   ADC did not provide information demonstrating that ADC personnel  
7 are authorized under federal law to handle controlled substances.

8           90.   ADC claimed that “[t]he information that has been redacted is  
9 confidential pursuant to A.R.S. § 13-757(C).” (Ex. E.)

10                   **ADC currently refuses to provide the same type of information it**  
11                   **has previously provided.**

12           91.   In July 2011, in response to a public-records lawsuit, ADC released  
13 information about its supply of sodium thiopental.

14           92.   ADC’s public-records release included the name of the foreign  
15 supplier of the drug.

16           93.   ADC’s public-records release included the lot numbers of the drug.

17           94.   ADC’s public-records release included the expiration dates of the  
18 drug.

19           95.   In July 2011, when ADC provided documents in response to a  
20 public-records lawsuit, ADC provided detailed information about its supply of  
21 sodium thiopental, including distributor name, lot numbers, and expiration dates.

22           96.   In August 2011, when ADC provided the FPD with lethal-drug  
23 procurement records, ADC provided detailed information about its September  
24 2010 supply of Nembutal<sup>®</sup>.

25           97.   The Nembutal<sup>®</sup> procurement records include the date the drug was  
26 ordered.

27           98.   The Nembutal<sup>®</sup> procurement records include the date the drug was  
28 scheduled for delivery.

1           99. The Nembutal<sup>®</sup> procurement records include the drug's NDC.

2           100. The Nembutal<sup>®</sup> procurement records include expiration dates of the  
3 drug.

4           101. The Nembutal<sup>®</sup> procurement records include lot numbers of the drug.

5           102. The Nembutal<sup>®</sup> procurement records include photographs of the vials  
6 of the drug.

7           103. The Nembutal<sup>®</sup> procurement records include photographs of the vials  
8 of the drug.

9           104. The Nembutal<sup>®</sup> procurement records include photographs of the  
10 expiration dates on the boxes of the drug.

11           105. The Nembutal<sup>®</sup> procurement records include photographs of the lot  
12 numbers on the boxes of the drug.

13           106. ADC now claims that numerical data and manufacturing information  
14 is protected under an Arizona statute protecting the identity of persons  
15 participating in executions.

16           107. Dates on which products are ordered are not people.

17           108. Dates on which products are ordered do not identify people involved  
18 in executions.

19           109. Dates on which products are due to be delivered are not people.

20           110. Dates on which products are due to be delivered do not identify  
21 people involved in executions.

22           111. NDCs are not people.

23           112. NDCs are numbers that do not identify people involved in  
24 executions.

25           113. Expiration dates of drugs are not people.

26           114. Expiration dates of drugs do not identify people involved in  
27 executions.

28           115. Lot numbers of drugs are not people.

1           116. Lot numbers of drugs do not identify people involved in executions.

2           117. The names of manufacturing establishments of drugs are not people.

3           118. The names of manufacturing establishments of drugs do not identify  
4 people involved in executions.

5           119. The names of drug distribution companies are not people.

6           120. The names of drug distribution companies do not identify people  
7 involved in executions.

8           121. ADC redacted order dates in order to hide the fact that ADC intends  
9 to use expired Nembutal<sup>®</sup>.

10           122. On information and belief, ADC redacted delivery dates in order to  
11 hide the fact that ADC intends to use expired Nembutal<sup>®</sup>.

12           123. On information and belief, ADC redacted the NDC of the Nembutal<sup>®</sup>  
13 in order to hide information that could identify the manufacturer because the  
14 manufacturer could verify expiration dates.

15           124. On information and belief, ADC redacted or withheld expiration  
16 dates in order to hide the fact that ADC intends to use expired Nembutal<sup>®</sup>.

17           125. On information and belief, ADC redacted or withheld lot numbers  
18 because those numbers could be used to determine expiration dates.

19           126. On information and belief, ADC redacted the manufacturer of the  
20 Nembutal<sup>®</sup> because the manufacturer could verify expiration dates.

21           127. On information and belief, ADC redacted the distributor of the  
22 Nembutal<sup>®</sup> because the distributor could verify expiration dates.

23           128. On information and belief, ADC refused to provide information  
24 relating to individual DEA authorizations to handle controlled substances because  
25 certain members of the execution team are not licensed to handle controlled  
26 substances.

27

28

## Claims for Relief

**Claim One: Defendants' deliberate actions in hiding information violates Plaintiff's First Amendment right to be informed about the manner in which the State implements the most serious penalty available in the criminal-justice system.**

129. Plaintiff incorporates by reference each and every statement and allegation set forth throughout this Complaint as if fully rewritten.

130. Defendants' refusal to provide Plaintiff with information that would enable him to determine how the State intends to execute him denies him his First Amendment right of access to governmental proceedings. See Cal. First Amendment Coal. v. Woodford, 299 F.3d 868, 873 (9th Cir. 2002) ("It is well-settled that the First Amendment guarantees the public—and the press—a qualified right of access to governmental proceedings."); id. at 875 (noting that the public's First Amendment right of access to governmental proceedings extends to executions).

131. Defendants' deliberate concealment of information that would enable Plaintiff to determine how the State intends to carry out the death sentence, including information relating to lethal-injection drugs and the authority of Defendants to handle controlled substances, denies Plaintiff of his First Amendment right of access to governmental proceedings.

132. Defendants' deliberate concealment of information that would enable Plaintiff to determine how the State intends to carry out the death sentence, including information relating to lethal-injection drugs and the authority of Defendants to handle controlled substances, denies Plaintiff of his First Amendment right to be informed about how the State intends to implement the most serious punishment possible: the penalty of death.

**Claim Two: Defendants' deliberate actions in hiding information regarding the lethal-injection drugs that they intend to use denies Plaintiff his federal rights to due process and meaningful access to the courts.**

133. Plaintiff incorporates by reference every statement and allegation set forth throughout this Complaint as if fully rewritten.

134. The Fourteenth Amendment prohibits a state from depriving "any person of life, liberty, or property, without due process of law." U.S. Const. amend XIV. 214.

135. "[P]risoners have a constitutional right of access to the courts." See *Bounds v. Smith*, 430 U.S. 817, 821 (1977). The "right of access to the courts . . . is founded in the Due Process Clause." *Wolff v. McDonnell*, 418 U.S. 539, 579 (1974).

136. Plaintiff has a liberty interest in assuring that his execution is carried out in a manner consistent with the Eighth Amendment.

137. Defendants' failure to provide Plaintiff with the requested information regarding his scheduled execution and the drug it intends to use has created a virtually insurmountable barrier to the filing and prosecution of a colorable Eighth Amendment claim.

138. By deliberately concealing information from Plaintiff, Defendants have actively prevented Plaintiff from making a valid assessment of whether he will be executed in a manner that will violate his Eighth Amendment rights. Therefore, Defendants' actions have violated Plaintiff's rights to due process and access to the courts.

**Prayer for Relief**

WHEREFORE, Plaintiff prays for:

1. Temporary, preliminary, and permanent injunctive relief to enjoin the defendants, their officers, agents, servants, employees, and all persons acting in concert with them from concealing information that is not related to the identification of persons participating in

1 executions, and that is necessary to ensuring Plaintiff's First  
2 Amendment right of access to governmental proceedings, including  
3 but not limited to information about

- 4 a. The manufacturer of lethal-injection drugs  
5 b. The NDCs of lethal-injection drugs  
6 c. The lot numbers of lethal-injection drugs  
7 d. The expiration dates of lethal-injection drugs  
8 e. Documentation indicating that those who will handle  
9 pentobarbital or other controlled substances in the execution  
10 have the appropriate DEA authorization to do so.

- 11 2. Appropriate and necessary discovery and an evidentiary hearing to  
12 permit Plaintiff to prove his constitutional claims; and  
13 3. Any such other relief as the Court deems just and proper.

14 Respectfully submitted this 2nd day of October 2013.

15  
16 Kelley J. Henry  
17 Denise Young

18 s/ Kelley J. Henry  
19 Counsel for Plaintiff  
20  
21  
22  
23  
24  
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26  
27  
28



# Exhibit A

Office of the  
**FEDERAL PUBLIC DEFENDER**  
for the District of Arizona  
Capital Habeas Unit

**Jon M. Sands**  
Federal Public Defender

direct line: 602-382-2816  
email: dale\_baich@fd.org

July 19, 2013

Mr. Charles Ryan, Director  
Arizona Department of Corrections  
1601 West Jefferson  
Phoenix, AZ 85007

Dear Director Ryan:

I am writing to you on behalf of Robert Jones and Ed Schad, for whom the State has filed motions for warrants of execution.<sup>1</sup> In order for me to properly advise Messrs. Jones and Schad about their potential executions, I request that you provide me with the following information pertaining to the lethal substance that Arizona Department of Corrections (ADC) intends to use in his execution and ADC's authorization to use controlled substances in executions.

1. ADC Department Order 710 lists pentobarbital and sodium thiopental as the two default lethal substances used for executions in the one-drug protocol.<sup>2</sup> Because I believe that ADC does not have a current supply of pentobarbital<sup>3</sup> or

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<sup>1</sup> Mot. for Warrant of Execution, *State v. Jones*, No. CR-98-0537-AP June 25, 2013; Mot. for Warrant of Execution, *State v. Schad*, No. CR-13-0058-PC June 25, 2013.

<sup>2</sup> See ADC Dep't Order 710, Attachment D section C, effective date Sept. 21, 2012.

<sup>3</sup> On September 27, 2010, ADC purchased a supply of Nembutal. See Defendant's Disclosures, Bates No. 01985 DFS' 26(a)(1) Disclosures and Responses to RFP's, (Nembutal Purchase Order), *West v. Brewer*, No. 2:11-cv-01409-NVW (D. Ariz.), August 19, 2011.

That supply expired in March 2013. See Defendant's Disclosures, Bates No. 01973-01978 DPS' 26(a)(1) Disclosures and Responses to RFP's, (Photographs of Nembutal Supply), *West v. Brewer*, No. 2:11-cv-01409-NVW (D. Ariz.), August 1, 2011.

Additionally, Nembutal has not been available to prisons in states that have capital punishment since July 1, 2011. See Lundbeck statement, *Lundbeck overhauls pentobarbital distribution program to restrict misuse*, <http://investor.lundbeck.com/releasedetail.cfm?ReleaseID=605775> (last visited May 25, 2012).

Director Charles Ryan  
July 19, 2013  
Page 2

sodium thiopental,<sup>4</sup> please identify the name of each lethal substance<sup>5</sup> ADC intends to use for the two executions now, so the clients can be properly advised. As you are aware, addressing these issues at the last minute is extremely difficult.<sup>6</sup>

2. Please provide me with the name of the manufacturer; the source of the substance, including whether the substance is from a domestic or foreign source; proof that the substance is approved by the Food and Drug Administration (FDA); and the legal authority for your acquisition and possession of the lethal substance ADC intends to use.
3. If ADC intends to use a substance that is not FDA-approved, please provide the source of that drug. In particular, if ADC intends to use a compounded substance, please identify the name of the pharmacist or other personnel who will provide the compounded substance.
4. Please provide me with the credentials<sup>7</sup> of each IV Team member with respect to any Drug Enforcement Agency (DEA) registrations that authorize IV Team members to handle controlled substances.

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<sup>4</sup> You previously wrote ADC surrendered its supply of sodium thiopental to the Drug Enforcement Agency on February 2, 2012. Additionally, importation of additional supplies of sodium thiopental have been prohibited since March of 2012, under *Beatty v. FDA*, 853 F. Supp. 2d 30, 35 (D.D.C. 2012) *appeal filed, sub nom. Cook v. FDA*, No. 1:11-cv-00289-RJL (D.C. Cir.), and *argued* March 25, 2013.

<sup>5</sup> Because I do not know how many lethal substances the ADC intends to use, I use “substance” in this letter to refer to one or multiple substances.

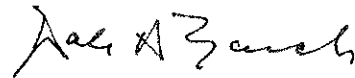
<sup>6</sup> See *Towery v. Brewer*, 672 F.3d 650, 652-53 (9th Cir. 2012) (noting that the State of Arizona’s consistent approach to change protocols on the eve of executions forces the court to hear appeals at the “in the waning hours before executions” and cannot continue).

<sup>7</sup> ADC Dep’t Order 710, section 710.02, 1.2.5.2.

Director Charles Ryan  
July 19, 2013  
Page 3

The information requested is critical in advising the clients regarding their pending executions. Your prompt response will be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale A. Baich". The signature is fluid and cursive, with the first name "Dale" and last name "Baich" clearly distinguishable.

Dale A. Baich  
Supervisor  
Capital Habeas Unit

DAB/clh

cc: Tim Gabrielsen  
Denise I. Young  
Kelley J. Henry

# Exhibit B



JANICE K. BREWER  
GOVERNOR

# Arizona Department of Corrections

1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007  
(602) 542-5497  
www.azcorrections.gov



CHARLES L. RYAN  
DIRECTOR

July 30, 2013

Dale Baich, Supervisor  
Capital Habeas Unit  
Office of the Federal Public Defender  
850 W. Adams St., Suite 201  
Phoenix, AZ 85007

RECEIVED  
AUG 01 2013  
Federal Public Defender  
Capital Habeas Unit

Re: Warrants of Execution for:  
Robert Jones, ADC #070566 and Edward Schad, ADC #040496

Dear Mr. Baich:

In response to your letter of July 19, 2013, inquiring about the name and source of the drug the Arizona Department of Corrections ("ADC") intends to use for these executions, the ADC will follow the one-drug protocol set forth in Department Order 710 (Chart A, Attachment D). The ADC intends to use unexpired, domestically obtained Pentobarbital for these executions.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles L. Ryan".

Charles L. Ryan  
Director

CLR/dn/kp

cc: Jeff Hood, Deputy Director  
Robert Patton, Division Director, Prison Operations  
Dawn Northup, General Counsel  
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office

# Exhibit C

Office of the  
**FEDERAL PUBLIC DEFENDER**  
for the District of Arizona  
Capital Habeas Unit

Jon M. Sands  
Federal Public Defender

direct line: 602-382-2816  
email: dale\_baich@fd.org

August 6, 2013

Mr. Charles Ryan, Director  
Arizona Department of Corrections  
1601 West Jefferson  
Phoenix, AZ 85007

Dear Director Ryan:

Thank you for your recent response to my letter regarding the name of the drug that the Arizona Department of Corrections (ADC) intends to use for Robert Glen Jones Jr.'s and Edward Schad's potential executions. I am writing to follow up on some of the unresolved issues from my original letter.

You stated in your response that "ADC intends to use unexpired, domestically obtained Pentobarbital" for the executions of Messrs. Jones and Schad. However, you did not provide me with the name of the manufacturer, the source of the pentobarbital, and the expiration date of the drug. For instance, if Hospira was the manufacturer for Lundbeck, and the brand name of the drug was Nembutal,<sup>1</sup> Messrs. Jones and Schad would know that the pentobarbital was FDA-approved.<sup>2</sup>

If ADC intends to use a substance that is not FDA-approved, please provide the source of that drug, the manufacturer, and the expiration date. In addition, if ADC intends to use a compounded substance, please identify the name of the pharmacist or other personnel

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<sup>1</sup> On August 1, 2013, the State of Florida disclosed that it acquired Nembutal manufactured by Hospira for Lundbeck on June 9 and 15, 2011, that has expiration dates of September 30 and November 30, 2013. See Dep't of Corr. Answer to Interrogatory, *Ferguson v. Palmer*, No. 3:12-cv-0136-UAMH-JBT (M.D. Fla., Aug. 1, 2013) (ECF No. 52).

<sup>2</sup> You stated that FDA approval of the drugs used to carry out execution makes a difference. "If it was not FDA approved, then we may not [] acquire[] that." See Dep. of Charles Ryan, at 208:15-21, Oct. 14, 2011, *West v. Brewer*, No. 2:11-cv-01409-NVW (D. Ariz.).



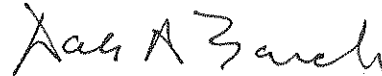
Director Charles Ryan  
August 6, 2013  
Page 2

who will provide the compounded substance, as well as the source(s) of the ingredients that the compounder uses.

As you know, pentobarbital is a Schedule II drug. Accordingly, please provide me with the credentials of each IV Team member with respect to any Drug Enforcement Agency (DEA) registrations that authorize IV Team members to handle controlled substances.

Again, I appreciate your attention to these questions. Your prompt response will be greatly appreciated.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale A. Baich".

Dale A. Baich  
Supervisor  
Capital Habeas Unit

DAB/clh

cc: Tim Gabrielsen  
Denise I. Young  
Kelley J. Henry  
Jeff Hood, Deputy Director  
Robert Patton, Division Director, Prison Operations  
Dawn Northup, General Counsel  
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office

# Exhibit D



JANICE K. BREWER  
GOVERNOR

# Arizona Department of Corrections

1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007  
(602) 542-5497  
www.azcorrections.gov



CHARLES L. RYAN  
DIRECTOR

August 16, 2013

Dale Baich, Supervisor  
Capital Habeas Unit  
Office of the Federal Public Defender  
850 W. Adams Street, Suite 201  
Phoenix, AZ 85007

Dear Mr. Baich:

In response to your letter of August 6, 2013, requesting the name of the manufacturer and the source of the drug the Arizona Department of Corrections ("ADC") intends to use for the executions of inmates Robert Jones (#070566) and Edward Schad (#040496), that information is confidential and is not subject to disclosure under A.R.S. § 13-757(C). As I reiterated in my letter of July 30, 2013, ADC intends to use the one-drug protocol set forth in Chart A, Attachment D of Department Order ("DO") 710. The protocol to be used for the anticipated executions of inmates Jones and Schad has not changed since ADC published changes to DO 710 in September, 2012. As you know, these changes ultimately led to the Plaintiffs in *Towery v. Brewer*, CV-00245-NVW entering a stipulated dismissal of their Complaint, challenging the constitutionality of Arizona's execution protocol. Similarly, the credentials of the IV team remain the same and are clearly stated in DO 710, Section 1.2.5.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles L. Ryan".

Charles L. Ryan  
Director

CLR/DN/kp

cc: Jeff Hood, Deputy Director  
Robert Patton, Division Director, Prison Operations  
Dawn Northup, General Counsel  
Jeff Zick, Division Chief, Capital Appeals, Attorney General's Office  
CLR83336473

**RECEIVED**  
AUG 19 2013  
FEDERAL PUBLIC DEFENDER  
CAPITAL HABEAS UNIT

# Exhibit E



JANICE K. BREWER  
GOVERNOR

# Arizona Department of Corrections

1601 WEST JEFFERSON  
PHOENIX, ARIZONA 85007  
(602) 542-5497  
www.azcorrections.gov



CHARLES L. RYAN  
DIRECTOR

Sent Via E-mail

September 25, 2013

Kelly Flood  
Staff Attorney  
ACLU of Arizona  
P.O. Box 17148  
Phoenix, AZ 85011

Re: Public Records Request

Dear Ms. Flood:

Thank you for clarifying your September 17, 2013 public records request. ADC disagrees with your assertion that any portion of the Federal District Court's decision in *Landrigan v. Brewer*, 2010 WL 4269559, D. Ariz. (2010), remains intact following the United States Supreme Court's decision in *Brewer v. Landrigan* \_\_\_ U.S. \_\_\_, 131 S. Ct. 445 (2010), vacating that decision. Federal law does not compel the ADC to disclose information that is deemed confidential by state statute.

Attached is an additional, redacted record responsive to your request. The information that has been redacted is confidential pursuant to A.R.S. § 13-757(C). The attached record, together with the records previously sent on September 20, 2013, are the complete records in ADC's possession that are responsive to your public records request.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dawn Northup".

Dawn Northup  
General Counsel

cc: Director Charles Ryan  
Jeff Hood, Deputy Director  
Robert Patton, Division Director, Prison Operations  
Jeff Zick, Assistant Attorney General  
Jon Anderson, Assistant Attorney General



PAGE 1 OF 1 ROUTE/STOP  
 CUST. NO. DATE ORIGINAL INVOICE  
 REG. NO. CUST. DEA NO. ORDER NO. CUSTOMER P.O. NUMBER  
 EXEMPT FA2203571  
 DEPT. ORDER DATE CONF. NO.

DEA FED ID  
 S ARIZONA STATE PRISON - FLORENCE  
 H WARDEN-CARSON MCWILLIAMS \*\*\*\*  
 P 1305 BUTTE AVENUE  
 T FLORENCE, AZ 85232

B ARIZONA STATE PRISON - FLORENCE  
 L WARDEN-CARSON MCWILLIAMS \*\*\*\*  
 L 1305 BUTTE AVENUE  
 T FLORENCE, AZ 85232

ITEM NUMBER	NDC/UPC	DESCRIPTION	SIZE	REF	UNIT PRICE	EXTENSION
10	10	EA NEMBUTAL SOD 50MG/ML 50ML C2	1MD 2		900.77	900770
10	10	PERKINS SHIPPED				
10	10	HONAN PERKINS SHIPPED				
		Total RX		9007.70		
		Total Ref		9007.70		
		NET AMOUNT		9007.70		
		INVOICE SUB TOTAL				
		NET TO				
		FOR DELIVERY				
		DUE DATE				900770

If this invoice reflects any discounted prices, credits, or rebates or if prices reductions are subsequently earned and paid with respect to the merchandise/services described herein, then federal law may require disclosure on the price reduction on your claim or cost reports for Medicare or Medicaid reimbursement under 42 U.S.C. 1396p-7b.

Omit Codes:  
 1 Mfg. B. O.  
 2 Mfg. out  
 3 Mfg. out  
 4 Not stocked  
 5 Mfg. disc.  
 6 Whse. disc.  
 7 Drug recall  
 8 New Item/stock unavail.  
 9 Restricted Item

Note Codes:  
 T Taxable  
 G Generic Sub  
 PP Pharm/Pack Discount  
 CT Contract  
 SN Special Net  
 SP Special Pricing

Customer is a final dispenser that does not and will not redistribute prescription pharmaceuticals into the secondary market

Remove this  
Page 1  
Preservation first

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\*\*\* TOTE# [REDACTED]  
ARIZONA STATE PRISON - [REDACTED]  
DATE- [REDACTED] /2011  
RX-711 OTC-711  
CUST PO [REDACTED]  
\*\*\*\*\*

Container Num [REDACTED]  
INV 6134728

[REDACTED] /11 RX  
NEMBUTAL SOD. 50  
MG/ML 50ML C2  
10 1 MD  
NDC [REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NEMBUTAL	NEMBUTAL	NEMBUTAL	NEMBUTAL	NEMBUTAL	NEMBUTAL
11	11	11	11	11	11
I# [REDACTED]	I# [REDACTED]	I# [REDACTED]	I# [REDACTED]	I# [REDACTED]	I# [REDACTED]
1 50 MG	1 50 MG	1 50 MG	1 50 MG	1 50 MG	1 50 MG
10	10	10	10	10	10
90077	90077	90077	90077	90077	90077

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
NEMBUTAL	NEMBUTAL	NEMBUTAL	NEMBUTAL
11	11	11	11
I# [REDACTED]	I# [REDACTED]	I# [REDACTED]	I# [REDACTED]
1 50 MG	1 50 MG	1 50 MG	1 50 MG
10	10	10	10
90077	90077	90077	90077

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Cust#









1. **Endocrine system:** The endocrine system is the primary target of the carcinogenic action of the polycyclic aromatic hydrocarbons (PAHs). The carcinogenic action of PAHs is thought to be mediated by the formation of reactive intermediates which bind to DNA, forming adducts that can lead to mutations. The formation of these adducts is thought to be the first step in the carcinogenic process. The endocrine system is also affected by PAHs, with some studies showing that PAHs can alter the levels of various hormones, including testosterone and estradiol. This alteration of hormone levels may contribute to the carcinogenic action of PAHs.

2. **Reproductive system:** The reproductive system is another major target of the carcinogenic action of PAHs. PAHs have been shown to alter the levels of sex hormones, which can lead to reproductive dysfunction. In males, this can manifest as reduced sperm count and altered sperm morphology. In females, it can lead to altered estrous cycles and reduced fertility. These effects are thought to be mediated by the alteration of hormone levels by PAHs.

3. **Immune system:** The immune system is also affected by PAHs. PAHs have been shown to suppress the immune system, leading to a decreased ability to fight off infections and tumors. This suppression is thought to be mediated by the alteration of the levels of various immune system components, including T cells and antibodies.

4. **Respiratory system:** The respiratory system is a major target of the carcinogenic action of PAHs. PAHs are inhaled as part of the normal respiratory process, and they can cause damage to the respiratory tract. This damage can lead to the development of respiratory diseases, including chronic bronchitis and lung cancer. The damage is thought to be mediated by the formation of reactive intermediates which bind to the cells of the respiratory tract.

5. **Digestive system:** The digestive system is also affected by PAHs. PAHs can be absorbed through the digestive tract, and they can cause damage to the cells of the digestive tract. This damage can lead to the development of digestive diseases, including liver cancer and colorectal cancer. The damage is thought to be mediated by the formation of reactive intermediates which bind to the cells of the digestive tract.

6. **Cardiovascular system:** The cardiovascular system is also affected by PAHs. PAHs have been shown to alter the levels of various components of the cardiovascular system, including cholesterol and triglycerides. This alteration can lead to the development of cardiovascular diseases, including atherosclerosis and heart disease. The alteration is thought to be mediated by the alteration of hormone levels by PAHs.

7. **Neurological system:** The neurological system is also affected by PAHs. PAHs have been shown to alter the levels of various components of the neurological system, including neurotransmitters and neurotrophic factors. This alteration can lead to the development of neurological diseases, including Parkinson's disease and Alzheimer's disease. The alteration is thought to be mediated by the alteration of hormone levels by PAHs.

8. **Other systems:** PAHs also affect other systems in the body, including the skin and the eyes. PAHs can cause skin damage, leading to the development of skin cancer. They can also cause eye damage, leading to the development of eye cancer. The damage is thought to be mediated by the formation of reactive intermediates which bind to the cells of the skin and the eyes.

9. **Conclusion:** The carcinogenic action of PAHs is mediated by a variety of mechanisms, including the formation of reactive intermediates which bind to DNA, the alteration of hormone levels, and the damage to various organs and systems in the body. Understanding these mechanisms is important for the development of strategies to prevent and treat PAH-induced cancer.

